

L. Mohanan Vs. Mohammed Idris and ors.

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Court : Chennai

Decided On : Dec-12-2006

Reported in : 2007(1)CTC308

Judge : S. Rajeswaran, J.

Acts : Code of Civil Procedure (CPC) - Sections 114 - Order 47, Rule 1(1)

Appeal No. : Review Application No. 84 of 2006 and C.R.P. PD. No. 54 of 2006

Appellant : L. Mohanan

Respondent : Mohammed Idris and ors.

Advocate for Def. : Lakshmi Priya Associates for 1st Respondent

Advocate for Pet/Ap. : T.R. Mani, Sr. Counsel for ;M. Balasubramanian, Adv.

Disposition : Application dismissed

Judgement :

ORDER

S. Rajeswaran, J.

1. This Review Application has been filed against the order dated 12.4.2006 passed by this Court in C.R.P.PD. No. 54/2005.

2. The facts are as under:

The review petitioner is the 6th respondent who had filed the CRP PD No. 54/2005 challenging the order of the trial court dated 13.12.2004 directing the 1st respondent herein to value the suit at Rs.2 lakhs and to pay a deficit court fee of Rs.9375/-.

3. O.S. No. 9869/1990 was instituted by the plaintiff after filing O.P. No. 324/1986 permitting her to institute the suit as an indigent person. The suit is for declaration to declare that the sale deed dated 7.1.1985 executed by the 2nd defendant in favour of the 1st respondent is null and void and illegal. Pending suit, I.A.o.2173/1997 was filed by the review petitioner to implead himself as a party as he purchased the suit schedule property on 10.6.1988 for a sale consideration of Rs.2 lakhs. I.A. No. 2173/1997 was allowed on 1.9.1997 and the review petitioner was impleaded as 6th defendant in the suit. The review petitioner/6th defendant filed additional written statement contending that the market value of the property is at Rs.47 lakhs and the plaintiff has undervalued the relief of recovery of possession at Rs.75,000/-. This objection was taken as the plaintiff amended the plaint seeking additional relief of recovery of possession after her amendment petition was allowed on 6.12.1997. Based on the additional written statement, an additional issue as to the value of the prayer for declaration and recovery of possession was framed and the same was tried as a preliminary issue. The trial court by order dated 13.12.2004 held that the prayer for declaration in the suit has been correctly valued and the prayer for recovery of possession is not correctly valued. Therefore the trial court directed the 2nd plaintiff to value the prayer for recovery of possession at Rs.2 lakhs and to pay the deficit court fee. Challenging the order dated 13.12.2004 deciding the preliminary issue of court fee, the above review petitioner filed C.R.P.PD. No. 54/2005 and the learned Judge of this Court by order dated 12.4.2006 dismissed the C.R.P., with exemplary cost of Rs.5,000/-. Against this order dated 12.4.2006, the above review application has been filed. As the learned Judge who passed the order has retired subsequently, the Review Application has been posted before me on the orders of the Hon'ble Chief Justice.

4. Heard Mr. T.R. Mani learned Senior counsel for the Review Petitioners and the learned Counsel for the 1st respondent. I have also perused the documents filed in support of their submissions.

5. The learned Senior counsel for the petitioner has submitted that as the amendment petition to include prayer for recovery of possession from the Review Petitioners was allowed on 6.12.1997, the prayer should have been valued at the market value of the property as on 6.12.1997 or at least at Rs.20 lakhs being the market value as decided by the senior bailiff of City Civil Court, Chennai on 1.9.2004.

6. I am unable to accept the submissions of the learned Senior Counsel for the reason that the above petition has been filed under Section 114 of CPC by way of review to review the order dated 12.4.2006.

7. Order 47 CPC deals with application for review for judgment and as per order 47 Rule 1(1) an application may be filed by any person under Section 114 CPC, if he or she discovered new and important matter or evidence which was not within his knowledge, there was a mistake or error in the order under review and on the face of the record or for any other sufficient reason. The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of the superior court in any other case shall not be a ground for the review of such judgment.

8. Therefore excepting under the circumstances enumerated under Order 47 Rule 1(1), a review of an order is not possible.

9. By the order dated 12.4.2006 the learned Judge of this Court after following the decisions reported in 1980 S.C. 691 Neelavathi v. N. Natarajan : AIR 1987 SC2085 Tara Devi v. Thakur Radha Krishna Maharaj and the judgment of this Court reported in 2002 (2) CTC 513 V.R. Gopalakrishnan v. Andiammal held that the order of the trial court adopting the value of the suit property at Rs.2 lakhs is correct.

10. Even though it was mentioned in para 11 of the order under review that the review petitioner/revision petitioner himself purchased the suit property 7 years after filing of the suit appears to be incorrect, it will have no bearing on the final outcome of the decision rendered by the learned Judge on 12.4.2006. On this ground, the order cannot be reviewed at all. Considering the narrow scope of the review petition, I am not able to countenance any of the arguments advanced by the learned Senior counsel for reviewing the order dated 12.4.2006. If at all the review petitioner is aggrieved by the order of this Court dated 12.4.2006, the proper remedy is only to file an appeal on merits. Hence I do not find any merits in the above review application and the same is dismissed. No costs.

11. It is stated by the learned Counsel for the 1st respondent that as the cost of Rs.5,000/- as ordered by this Court on 12.4.2006 was not paid within the stipulated time, the trial court struck-off the defence of the review petitioner as directed by this Court in the order dated 12.4.2006 and the suit was already decreed on 14.6.2006 in favour of the plaintiffs.

12. This submission is recorded.

13. In the result, the Review Application is dismissed. No costs.